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**1 - From Washington to West, system failed to protect Texas town from tragedy, DMN, 5/5/13**

<http://www.dallasnews.com/news/west-explosion/headlines/20130504-from-washington-to-west-system-failed-to-protect-texas-town-from-tragedy.ece>

Disaster prevention at the West Fertilizer Co. was everyone's job. In the end, it didn't get done. On paper, a seamless system combined federal oversight, state coordination, local knowledge and company initiative to keep people safe.

**2 - Many Texas plants lack safety inspections despite risks, data shows, DMN, 5/5/13**

<http://www.dallasnews.com/news/west-explosion/headlines/20130504-many-texas-plants-lack-safety-inspections-despite-risks-data-shows.ece>

Twenty-two percent of plants in Texas that regulators say pose a risk of explosion or toxic release have never have been inspected for emergency preparedness, federal data shows. Another 10 percent were inspected, but not by federal, state or even local governments. Instead, those facilities reported inspections by their own contractors, insurance companies or employees, according to an analysis of the data by The Dallas Morning News.

**3 - Reluctant to leave home, BRADV, 5/6/13**

<http://theadvocate.com/home/5884362-125/reluctant-to-leave-home>

Rhett and Donna Pipsair have spent the last 23 years making their home on Sauce Piquante Lane just the way they want it.

**4 - Tremors at Assumption sinkhole halt some work, KNOE, 5/5/13**

<http://www.knoe.com/story/22164762/tremors-at-assumption-sinkhole-halt-some-work>

Assumption Parish officials say a moderate increase in tremors at the 15-acre sinkhole near Bayou Corne has prevented some work there since Wednesday.

**5 - Sinkholes: The hole truth, CBS, 5/5/13**

[http://www.cbsnews.com/8301-3445\\_162-57582888/sinkholes-the-hole-truth/](http://www.cbsnews.com/8301-3445_162-57582888/sinkholes-the-hole-truth/)

(CBS News) We can't claim to have the "whole truth and nothing but" . . . but there is a growing body of research into those headline-making sinkholes that can turn an abode into an abyss in the twinkling of an eye. Our Cover Story is reported now by Mark Strassmann:

**6 - Lightning investigated as cause of oil tank explosions in Louisiana, Examiner, 5/4/13**

<http://www.examiner.com/article/lightning-investigated-as-cause-of-oil-tank-explosions-louisiana>

Lightning is being investigated as a potential cause of a series of two oil tank explosions, that forced the evacuation of more than two dozen homes in Louisiana Thursday night

**7 - Oil tank fire near Denham Springs spreads to second tank, crews plan to inject foam, NOLA, 5/3/13**

[http://www.nola.com/traffic/baton-rouge/index.ssf/2013/05/oil\\_tank\\_fire\\_near\\_denham\\_spri.html#incart\\_river](http://www.nola.com/traffic/baton-rouge/index.ssf/2013/05/oil_tank_fire_near_denham_spri.html#incart_river)

An oil tank fire near Denham Springs was still burning and had spread to a second tank Friday afternoon, hours after an explosion Thursday night. Residents in the area, who were evacuated late Thursday night, were still unable to return to their homes No injuries were reported.

**8 - Judges Appear To Back EPA Basis For Strict Sludge Incinerator Air Rule, Inside EPA, 5/3/13**

**<http://insideepa.com/201305032433369/EPA-Daily-News/Daily-News/judges-appear-to-back-epa-basis-for-strict-sludge-incinerator-air-rule/menu-id-95.html>**

Appellate judges at oral arguments hinted that they could support EPA's claim that it was right to regulate sewage sludge incinerators (SSIs) with a strict Clean Air Act maximum achievable control technology (MACT) standard, which could doom the wastewater treatment facility sector's suit claiming that the air rule is unnecessarily stringent.

**9 - Army Elevates Perchlorate Standards Dispute At Texas Site To EPA Chief , Inside EPA, 5/6/13**

**<http://insideepa.com/201305062433419/EPA-Daily-News/Daily-News/army-elevates-perchlorate-standards-dispute-at-texas-site-to-epa-chief/menu-id-95.html>**

The Army is elevating a dispute with EPA over perchlorate cleanup levels to the agency's acting administrator, after having failed to reach agreement at the regional level on the appropriate cleanup level for a Texas site in the absence of federal drinking water standards.

**10 - Water Agencies Tell Court EPA Promulgated Incinerator Rule Under Wrong Section of Law, BNA, 5/6/13**

**[http://esweb.bna.com/eslw/1245/split\\_display.adp?fedfid=30912099&vname=dennotallissues&jd=a0d8e0t8n2&split=0](http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=30912099&vname=dennotallissues&jd=a0d8e0t8n2&split=0)**

Municipal water agencies told a federal appeals court May 3 that the Environmental Protection Agency issued air pollution limits for sewage sludge incinerators under the wrong section of the Clean Air Act (National Ass'n of Clean Water Agencies v. EPA, D.C. Cir., No. 11-1131, oral arguments 5/3/13).

**11 - McCarthy vote set, but Republicans still unhappy , EENEWS, 5/6/13**

**<http://www.eenews.net/EEDaily/2013/05/06/2>**

Days before a vote on President Obama's nominee to head U.S. EPA, Republicans on the Environment and Public Works Committee say they still have questions about the agency's approach to transparency.

**12 - Acting administrator to discuss spending plan with House appropriators , EENEWS, 5/6/13**

**<http://www.eenews.net/EEDaily/2013/05/06/12>**

U.S. EPA acting Administrator Bob Perciasepe will face House appropriators Wednesday to discuss his agency's \$8.2 billion fiscal 2014 budget request.

<http://www.dallasnews.com/news/west-explosion/headlines/20130504-from-washington-to-west-system-failed-to-protect-texas-town-from-tragedy.ece>

**From:** McCorkhill, Michael  
**Sent:** Monday, May 06, 2013 7:24 AM  
**To:** Assunto, Carmen  
**Subject:** dnd West systems failed to protect DMN 5/4

May 04, 2013 11:02 PM CDT May 04, 2013 11:39 PM CDT From Washington to West, system failed to protect Texas town from tragedy

## From Washington to West, system failed to protect Texas town from tragedy



LM Otero/The Associated Press

Investigators sift through debris from the destroyed West Fertilizer Co. plant. Few details have emerged about what triggered the April 17 fire and subsequent explosion of what was apparently ammonium nitrate fertilizer.

1 of 2



By RANDY LEE LOFTIS

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- [Many Texas plants lack safety inspections despite risks, data shows](#)
- [Editorial: West's blame-passing game](#)
- [Complete coverage: West explosion](#)

Disaster prevention at the West Fertilizer Co. was everyone's job.

In the end, it didn't get done.

On paper, a seamless system combined federal oversight, state coordination, local knowledge and company initiative to keep people safe.

But in a small Texas farming town where the local fertilizer plant formed part of the background, as in hundreds of places across the country, the outcome was an explosion that left 15 dead, 200 injured and scores of homes and buildings destroyed.

Investigators have provided few answers about what triggered the April 17 fire and subsequent explosion of what was apparently ammonium nitrate fertilizer.

There is little mystery, however, about what happened before the fire: The system broke down.

### Missed opportunities

From Washington to West, little coordination or communication took place. At every stage, elements of the system missed opportunities to inspect, audit or even talk.

"It's no secret — here's this company sitting there in broad daylight," said Louise Comfort, director of the University of Pittsburgh's Center for Disaster Management and author of *Designing Resilience: Preparing for Extreme Events*.

"If one is to reduce risk and to monitor risk and prevent bad things from happening like this, it requires an active communications process. Checklists don't prevent disaster."

At a Texas House committee hearing last week, state agency chiefs explained at length how their organizations had met their legal requirements. Separately, federal agencies have said they also followed procedures.

The hearing, called by Homeland Security and Public Safety chairman Joe Pickett, D-El Paso, was apparently the first time the state agencies had gathered in one place to discuss explosive fertilizer in Texas communities.

Gov. Rick Perry, who heads Texas' disaster preparedness system, said after the West explosion that he did not believe more regulation would have prevented it.

*The Dallas Morning News* asked Perry's office whether he might consider other options, such as encouraging agencies to communicate so they might find and fix risks sooner.

Deputy press secretary Josh Havens said Perry believes it is too early to discuss any reforms.

"There is a lot of speculation out there, but it is premature to be talking about making changes to anything until the investigation is complete and there is a full understanding of what happened and why it happened," Havens said.

"Right now it's important to get this community back on its feet. As part of our state's ongoing disaster preparedness and response efforts, Gov. Perry, state agencies and local officials always review how we can prevent and respond to any disaster."

But the chair of the U.S. Senate's environment and public works committee, Sen. Barbara Boxer, D-Calif., said last week that immediate change might be needed.

Boxer announced oversight hearings on West to ask whether federal agencies, especially the Environmental Protection Agency, had done all they could.

"I cannot rest until we get to the bottom of what caused the disaster in West, Texas, and the tragic loss of life," Boxer said in a statement released by her office.

"It is critical that we find out how this happened. We must ensure that facilities like the one in West are complying with chemical safety laws. We will look at how the laws on the books are being enforced and whether there is a need to strengthen them."

Boxer gave the EPA and the U.S. Chemical Safety Board, a nonregulatory agency that is investigating the explosion, until May 16 to provide information.

### Shortcomings at every stage

The integrated safety net that is supposed to protect Americans arose from history's deadliest chemical accident: the 1984 leak of methyl isocyanate from a Union Carbide plant in Bhopal, India. Thousands died, but there is no reliable total.

Congress responded by establishing a system in which public disclosure of chemical hazards would click with federal-to-local planning to prevent accidents in the U.S.

Companies would report toxic releases and file risk-management plans. The EPA would make sure the reports were accurate and current.

The disclosures would empower states, local officials and the public to work with companies on mitigation and prevention.

Communities would form local emergency planning committees to carry out the work.

The West Fertilizer case seems to have exposed shortcomings in the system at every stage, starting at the top.

“There is a clear set of laws and procedures and responsibilities in place,” said Comfort, the Pittsburgh disaster expert. “Obviously, what’s missing is really the enforcement.”

In 2011, the EPA accepted West Fertilizer’s most recent risk-management plan, which said pressurized tanks of anhydrous ammonia posed no fire or explosion risks. Next to the tanks was the warehouse holding tons of ammonium nitrate, a well-known explosive that does not have to be reported in a risk plan.

The EPA did not audit the 2011 plan, spokesman David Gray said.

Boxer asked the EPA to explain why ammonium nitrate isn’t on the mandatory reporting list.

She also suggested, as have others, that the Clean Air Act’s general-duty clause — which says companies have a general duty to protect the public even without a specific rule — might have required more work at prevention.

“EPA, along with others, plays a vital role in preventing accidents like the one at the West facility,” Boxer asserted in a letter last week to Bob Persciasepe, the agency’s acting administrator.

Gray said the agency does not know yet whether West Fertilizer should have disclosed the fire and explosive risk, but will use the investigation results to decide if federal violations occurred.

The state-level coordination that Congress anticipated didn’t happen either.

Texas has an extensive and generally well-regarded system for responding to disasters, especially big, costly natural ones like hurricanes and tornadoes. Crime and terrorism get plenty of attention, too.

But prevention of chemical accidents seems to get less.

### Local efforts hamstrung

Three weeks before West, the Texas Department of Public Safety convened its annual Texas Emergency Preparedness Conference. Of 126 presentations available to the 3,000 attendees, none concerned helping small towns like West prevent chemical threats.

In the days after the West explosion, some state agencies weren't sure who looked after the safety of ammonium nitrate fertilizer, a mainstay of Texas' farm economy. Shortly after the blast, Texas Commission on Environmental Quality chairman Bryan Shaw said the Office of the Texas State Chemist did it.

State chemist Tim Herrman then explained that his office only checks physical security from theft, not explosive risks from fires. Herrman said he couldn't recall any meeting with the TCEQ to discuss explosion safety.

At Wednesday's state House hearing, Shaw said the TCEQ would be willing to meet with the state chemist over matters of mutual concern.

Apart from not talking to each other, state agencies did not seem to reach out to local officials to make sure they knew that a fire at West Fertilizer might cause a huge and deadly explosion.

Although the Texas Department of State Health Services and the TCEQ both knew the company had huge stores of ammonium nitrate, "no one from the state ever came to us and said, 'Hey, you need to look at this,'" McLennan County emergency coordinator Frank Patterson said Thursday.

That lack of coordination apparently hamstrung the local initiatives that everyone from Congress down had assumed would guarantee community safety. No one up the ladder in Austin or Washington seemed to notice.

Harris County, with hurricane risks and the nation's biggest chemical and refinery complex, has 15 local emergency planning committees. McLennan County barely has one, Patterson said — an ad-hoc group with no real structure or power.

It's unclear if West's volunteer fire department practiced for an explosion at the fertilizer plant. A hurried evacuation attempt before the blast suggests that an explosion risk was known. But the extent of local planning and prevention — the system's ultimate goal — is hazy.

Finally, it's not known whether the company did the things the system assumed companies would want to do: co-sponsoring drills and working with local officials to identify and reduce risks — such as boosting security and safety and beefing up fire protection.

Comfort said that is a critical failure point in the system.

"The major assumption of this law is that the companies that produce, store, ship and sell these commodities take responsibility for managing their own risk," she said.

### Only 'as a system'

West Fertilizer — with only a dozen or so employees, its business infrastructure now mostly blown to bits — hasn't publicly answered questions about what it did to prevent problems and help the town prepare.

Spokesman Daniel Keeney said the company is cooperating fully with the investigation, but he referred questions about reporting, safety and emergency planning to government agencies.

"We are doing this to ensure accurate information is communicated and to minimize the chances that we could inadvertently contribute to potential misunderstandings or confusion," he said.

Comfort said the multiple breakdowns amount to no one making sure everything was working.

"What's so painful about this is that the laws are on the books," she said. "They are the same in every single state.

"It can only operate as a system. It can only be effective if each of these jurisdictional levels plays their role and takes their responsibility."



<http://www.dallasnews.com/news/west-explosion/headlines/20130504-many-texas-plants-lack-safety-inspections-despite-risks-data-shows.ece>

## Many Texas plants lack safety inspections despite risks, data shows

By DANIEL LATHROP

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Published: 04 May 2013 11:10 PM

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Twenty-two percent of plants in Texas that regulators say pose a risk of explosion or toxic release have never have been inspected for emergency preparedness, federal data shows.

Another 10 percent were inspected, but not by federal, state or even local governments. Instead, those facilities reported inspections by their own contractors, insurance companies or employees, according to an analysis of the data by *The Dallas Morning News*.

In total, 33 percent of the more than 1,300 facilities in Texas that filed emergency plans with the U.S. Environmental Protection Agency either said they had not had an “outside safety inspection” or did not specify one by a government agency. A small number reported nothing at all about inspections.

Experts found *The News*’ findings troubling.

“It really shows you that we’re not doing a good job of inspecting these plants that are high risk to the community they’re in,” said Neil Carman, a former Texas state environmental inspector now working for the Sierra Club.

Concern about what could happen in a fire or emergency leads many fire departments to conduct their own inspections as part of fire code enforcement. Fire departments were among the inspecting agencies most often cited in the EPA reports.

Dallas assistant fire chief Ted Padgett, who oversees safety inspections, said most facilities develop plans that are inaccurate or insufficient to stop an emergency from becoming a disaster.

“The vast majority — the vast majority — have something in there that’s not right. Let’s put it that way,” Padgett said, referring to companies’ self-developed emergency preparedness plans.

## Risk management

*The News* analyzed the EPA’s “risk management” database of facilities after the April 17 fire and explosion at the West Fertilizer Co. that killed 15 people, injured more than 200 others and damaged hundreds of homes.

The EPA data contains self-reports of emergency plans and other information from 1,347 facilities in Texas that could release one or more of 140 toxic or flammable air pollutants. The Texas reports are part of a national database of more than 12,000 facilities nationwide obtained last year under the Freedom of Information Act by the Center for Effective Government, a Washington, D.C.-based nongovernmental research group.

Ammonium nitrate, which experts consulted by *The News* think may have caused the West explosion, is not on EPA’s list of “extremely hazardous chemicals” requiring tighter scrutiny.

Under EPA rules, all facilities with such chemicals — ranging from grain elevators to chemical plants — must report every five years. The filings include the date of the most recent outside safety inspection and who conducted it.

Of the more than 400 facilities in Texas reporting no official inspection:

71 percent reported having “extremely hazardous substances” that require separate reporting to state oversight agencies.

35 percent reported having more than 10 tons of flammable material.

22 percent reported having both “extremely hazardous substances” and more than 10 tons of flammable material.

Of the roughly 900 Texas facilities that reported having an official outside inspection:

24 percent reported inspections from the Texas Commission on Environmental Quality, the state equivalent of the EPA.

23 percent reported inspections by their local fire department.

21 percent reported inspections by the EPA.

18 percent reported inspections by the federal Occupational Safety and Health Administration.

The rest reported inspections by other state, local and federal agencies.

Because facilities report only their most recent inspection, on a five-year cycle, some may have received an official inspection not reflected in the 2012 data. In other cases, plants may be reporting official inspections that did not cover emergency preparedness. Still others that are not legally required to report voluntarily do so.

Experts said state and federal regulators simply can't keep up.

"They don't have the manpower or the resources to inspect all the facilities they have oversight for in any timely way," said Sean Moulton, an expert in regulatory and open government issues at the Center for Effective Government.

That may be why local fire departments had performed more of the inspections in Texas than either the EPA or OSHA. But leaving inspections to local fire inspectors is risky, said Padgett, the assistant Dallas fire chief.

While larger departments like his often have enough inspectors with training in hazardous materials and emergency planning, most smaller and volunteer departments do not, he said.

## West inspections

The data from EPA shows that West Fertilizer Co. reported a safety inspection in 2011 that was conducted by a private company, Security Truck Service. That company's website identifies it as a trucking company specializing in anhydrous ammonia. Owner Craig Rogers did not respond to questions from *The News*.

The West facility was also inspected in 2006 by TCEQ after the agency received complaints about odors at the plant. Inspectors examined the plant's anhydrous ammonia tanks; leaks of the chemical can produce a toxic cloud. In 2007, TCEQ also

investigated possible dust contamination of the plant's dry fertilizer, according to state records. The agency reissued permits after both inspections.

Officials of six state agencies with jurisdiction over toxic chemicals or hazardous materials, including TCEQ, the Department of State Health Services and the Department of Public Safety, told *The News* they either had no authority to conduct safety inspections or that their inspections are limited to the particular chemicals and processes they oversee.

A TCEQ official said the agency conducts 100,000 investigations, including routine inspections, each year, but has no authority or responsibility to review overall safety and emergency planning.

"A TCEQ investigation would focus on the air, water, and waste related items that are either directly permitted/authorized, or are otherwise under TCEQ's regulatory jurisdiction," spokesman Terry Clawson said in an email. "Other industrial conditions at facilities are not under TCEQ's investigative authority nor its regulatory control."

Investigators have not yet issued findings on the cause of the fire and explosion at the West facility, so it is not yet known whether better or more frequent inspections would have prevented the disaster or lessened its impact.

Through a spokesman, West Fertilizer Co. owner Donald Adair said he would not answer questions from the media but was cooperating with authorities.

"We continue to do everything we can to understand what happened to ensure nothing like this ever happens again in any community," Adair said in a statement. "We have encouraged all employees to assist in the fact finding to whatever degree possible."

Carman, the former environmental inspector, said companies will often make recommended safety fixes even when no "heavy-handed regulation" is in place to enforce them.

Because the West facility was next to homes and schools, he said officials should have suggested to the West plant's owner that he keep smaller quantities of ammonium nitrate on site and replenish it more often.

"All it would have taken," Carman hypothesized, "is a call to Mr. Adair."

## Reluctant to leave home



Advocate staff photo by ADAM LAU -- Rhett Pipsair stands on a pier extending through a swamp behind his house in the Bayou Corne community.

## Sinkhole uproots bayou residents

By David J. Mitchell

River Parishes bureau

**BAYOU CORNE** — Rhett and Donna Pipsair have spent the last 23 years making their home on Sauce Piquante Lane just the way they want it.

The Pipsairs started out in a mobile home and eventually built a two-story house with a manicured lawn, a pond in the backyard and, behind it, a gently curving pier ending at a dock in an endless cypress forest.

While many of the neighbors in Bayou Corne have moved away in the nine months since the Assumption Parish sinkhole formed across La. 70 South from their house, the Pipsairs have remained, in spite of a parish evacuation order issued Aug. 3.

Rhett Pipsair, 50, the father of two adult sons, said he has not evacuated because he has not been afraid of the sinkhole since it formed.

About a month ago, however, gas started bubbling up underneath a deck in one corner of his oblong pond, Pipsair said.

“This is making me think twice now that it’s in my own backyard,” Pipsair said. “I mean I’ve been building this place for 23 years. I can’t just up and leave, you know what I mean.”

Scientists studying the sinkhole say the gases in the bubbles are coming from several sources: Both decomposing organic matter and deep formations likely opened by the events that created the sinkhole, now 15.1 acres at the surface.

Scientists working for the Louisiana Office of Conservation said last week that Pipsair’s pond could be a signal that what they had feared last year — gases collecting underneath people’s houses — may be starting to occur.

The deeper formation of gas may be moving up and pushing shallow swamp gas up before the deeper gas appears in the shallowest layers under the Bayou Corne community.

The shallow gas released from decomposing matter is often called swamp gas, which is common in Louisiana, and is referred by scientists as being “biogenic.”

Known as “thermogenic,” the gas from deep underground, which is the focus of concern, has far older geologic origins.

Scientists have worried since last fall that this deep reservoir of gas could eventually move up closer to the surface, pass through the foundations of homes or accumulate under enclosed crawl spaces in homes, posing an invisible risk for explosions in the community of 350. Methane gas is odorless and colorless.

This fear has been one of the reasons the evacuation order has remained in place since August.

“The deep gas displacing the shallow swamp gas, appears to be occurring,” Gary Hecox, a CB&I hydrogeologist working on the sinkhole for the Louisiana Office of Conservation, told residents in a meeting last week.

A Texas Brine Co. salt dome cavern is suspected of having a sidewall failure that allowed millions of cubic yards of material to fill the hollow subterranean cavern and also unleashed oil and gas from deep underground.

Scientists have said they think about 45 million cubic feet of gas is now under a more than two-square mile area of the Mississippi River Alluvial Aquifer, which ranges from 120 to 600 feet deep.

The thermogenic gas found in the bayou bubble sites were the first warnings last May that something was amiss underground and in vent wells installed since November to burn off the gas.

Hecox said two shallower test wells in the area have since seen this shift from swamp gas toward thermogenic gas. The wells, known as Geoprobes, are about 30 feet deep.

One of those wells is in the Bayou Corne community. Pipsair's pond may be midway in this process.

"We do have some pretty strong isotopic data now that says at least some of the methane in the community that's being detected has moved its way up from deep underground and is now coming up into the shallow part of the system," Hecox said.

But Texas Brine Co. officials have emphasized that testing under the foundations of houses in the community as well as the monitoring of the air inside them has not produced indications of the deep formation gas.

The volume of gas burning from 33 vent wells is going down while tests of the wells appear to show that the layer of gas in the aquifer is decreasing, Bruce Martin, Texas Brine vice president of operations, told residents Wednesday.

In addition, Texas Brine officials said their highly detailed seismic survey of the area shows only one possible source for the deep gas, known as the Big Hum, and it is played out.

"Overall, I feel very good that we're making progress on getting the gas out of the aquifer as evidence by what we're seeing on the individual wells," Martin said.

Sonny Cranch, Texas Brine spokesman, said Friday that the company planned to fly a helicopter with a special probe over the area Saturday to better show where the gas is located in the aquifer for future vent wells.

Don Marlin, the state Office of Conservation's expert hired to review Texas Brine's seismic data, has raised the possibility of at least eight sources for the gas based on less detailed seismic data from 2007.

This has raised fears that the gas in the aquifer could be continually fed from several sources.

Patrick Courreges, spokesman for the Department of Natural Resources, said Friday the Blue Ribbon Commission, an expert panel appointed by DNR Secretary Stephen Chustz in late March, will have to work through the data and reach a conclusion. Hecox is one of 13 people on the commission.

Meanwhile, Pipsair said he will entertain a settlement offer from Texas Brine for his home but, speaking from his dock in the cypress forest Friday, he said it will be a hard decision to make.

“It’s real peaceful back here. You don’t hardly hear the traffic from the road. A lot of nature ... you name it, we got it back here pretty much,” Pipsair said. “It’s just a shame that we’re going to have to potentially move, I guess.”

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## Tremors at Assumption sinkhole halt some work

Posted: May 05, 2013 10:25 AM CDT

Updated: May 05, 2013 10:25 AM CDT

BAYOU CORNE, La. (AP) - Assumption Parish officials say a moderate increase in tremors at the 15-acre sinkhole near Bayou Corne has prevented some work there since Wednesday.

Parish emergency preparedness director John Boudreaux tells The Advocate (<http://bit.ly/Zu0U5v>) the tremors aren't strong enough to indicate another edge collapse. And he says they sometimes drop from the current level.

The last slough-in and burp was in mid-April. It added about three acres to the sinkhole.

Texas Brine, state and parish officials have said the tremors and surface slough-ins occur normally as the sinkhole finds its final shape and size.

Friday marked the ninth month that 350 residents of Bayou Corne and Grand Bayou have been under an evacuation order.

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May 5, 2013 9:11 AM

# Sinkholes: The hole truth

(CBS News) *We can't claim to have the "whole truth and nothing but" . . . but there is a growing body of research into those headline-making sinkholes that can turn an abode into an abyss in the twinkling of an eye. Our Cover Story is reported now by Mark Strassmann:*

If you're a fan of science fiction B-movies from the 1950s, sinkholes make perfect sense. They seem almost as improbable as alien body snatchers. The Earth suddenly opens up, with no warning and no escape, and swallows whatever's on the surface -- cars, homes, entire neighborhoods.

But sinkholes, of course, are all too real worldwide, in places like China, Brazil and Guatemala. Florida has so many of them, it has been called "Swiss cheese covered by soil."

In 1981, a sinkhole in Winter Park, Fla., grew longer than a football field. One resident described a sound like "giant beavers chewing." And just last month, a sinkhole in Chicago ate up three cars.



An aerial view of the large sinkhole that continued to grow as workers tried unsuccessfully to retrieve sunken sports cars from the depression, in Winter Park, Fla., May 11, 1981.

/ AP Photo

Of course, the sinkhole horror story most of us know best is that one back in February in Seffner, Florida, near Tampa, where a sinkhole 20 feet wide and 60 feet deep opened in the middle of the night.

His body was never found -- the fourth known sinkhole fatality in Florida.

"About anywhere you live in Florida, there is potential for a sinkhole to occur," said state geologist John Arthur, an expert on sinkholes.

Florida's surface has close to 70,000 likely sinkholes; at least 3,400 of them reported since the 1950s.



/ CBS News

A sinkhole is a naturally-occurring feature that forms when a cavity in the subsurface collapses. That cavity forms from the natural dissolving of rock.

What was a hole in the ground becomes a hole at land surface.

Florida's bedrock, mostly limestone, lies below layers of soil sand and clay. That bedrock is porous and over time can erode and become unstable, forming what geologists call "karst." From time to time, natural or man-made changes in the water table collapse this karst and create sinkholes.

Those collapses can happen in minutes, and take months to settle.

All states but Hawaii have at least some karst. "That's true," said Arthur. "If you look at a map of karst for the nation, there are little corners of even South Dakota that have the potential for some type of karst activity."

Though some states have a greater risk of sinkholes than others -- and not all sinkholes are the work of nature.

## 29 Photos

### Sinkholes

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Louisiana is one of those states. Ask Nick and Brenda Romero about a sinkhole's impact. In 1997, they moved full-time to Bayou Corne, a mix of working families and retirees 45 miles south of Baton Rouge.

"It first started out as a fishing community," said Nick Romero. "People were friendly, they stopped, they talked-- shared their stories.

People liked each other so much, every year the community held its own Mardi Gras parade -- part of its Cajun charm.



But last May, people started noticing something odd: gas bubbles in the water nearby.

Then on August 3, a sinkhole opened one-third of a mile from the Bayou Corne neighborhood. Over the last nine months, that hole has stretched fifteen acres wide, and plunged 170 feet deep. It filled up with water, rock, oil and natural gas.



A sinkhole near Bayou Corne, La., January 27, 2013. Drilling at a massive underground salt dome caused a collapse, and a sinkhole which could continue to grow for another year or two.

/ Jeffrey Dubinsky/Courtesy of LEANweb.org

No one enforced the mandatory evacuation order, but roughly 80 percent of Bayou Corne's 350 residents -- including both of Romero's next-door neighbors -- packed up and left.

Romero wants to stay put.

"I'm just not ready to just move out and depend on the sheriff or somebody to protect my property and everything I've worked so hard for," said Nick. "This is home."

And, again, while most sinkholes are natural disasters, this one was not. It was, Romero said, a preventable mistake.

An oil and gas service company called Texas Brine was drilling into a massive underground salt deposit near Bayou Corne. The excavation caused the sidewall of a salt dome to collapse. Three months later, the sinkhole opened.

"We don't have a complete understanding of why that failure occurred," said Bruce Martin, vice-president for operations at Texas Brine. He says his company has drilled 30 relief wells trying to contain and burn off natural gas leaking from the sinkhole into the aquifer.

Martin believes the sinkhole will never threaten the homes in Bayou Corne. But the company, pressured by the state of Louisiana, is preparing buyout offers for all the residents.

"I understand why the homeowners are upset; I would be upset if that was my home over there, too," said Martin. "The response has been very challenging. It's been an all-encompassing, full-frontal assault for the past eight months, and I think we're starting to see a light at the end of the tunnel that it's coming to an end."

But Martin also admits the sinkhole could continue to grow for another year or two.

"When is this going to end? Is it going to end correctly? My concern is about, will it happen again?" said Marylee Orr, the executive director of LEAN, the Louisiana Environmental Action Network.

The group says Bayou Corne's disaster should be a warning to other communities about developing in sinkhole-prone areas.

"Sadly, we do have sinkhole potential here, and we really want to make sure that there are buffer zones -- that there are no homes, or nursing homes or schools or hospitals anywhere near these salt domes," said Orr. "So there won't be another community like Bayou Corne, I hope, here in Louisiana to suffer the kind of heartache they have."

John Arthur, Florida's state geologist, says states could map land surfaces for their sinkhole risks and, where needed, toughen construction codes.

If a home is built in a sinkhole-prone area, Strassmann asked, is there anything that can be done to prevent a collapse?

"There's always a way to mitigate that risk," said Arthur. "You can grout inject and fill that hole and make the land more stable. It's a combination of geology and engineering that can hold the key to that answer."

Texas Brine has been paying residents in Bayou Corne \$875 a week to cover temporary housing costs. Buyout offers are expected in the next couple weeks.

But Nick Romero says trust between residents like him and the company has collapsed, like the sinkhole.

He wants to stay, but he's torn between two loves: "My wife has had cancer twice, and she doesn't want to be here, and I don't blame her. And I'm not going to force her to stay here. So we've looked for other places to go, but until that time, I'm staying here. I'm not going anywhere."

"You love your house, you love your wife more," said Strassmann.

"Yeah, yeah."

The last thing the Romeros ever thought would be their major worry in retirement . . . was a sinkhole.

**For more info:**

- [Florida Geological Survey](#)
- [Louisiana Environmental Action Network \(LEAN\)](#)
- [Texas Brine](#)
- [Sinkholes](#), Florida Dept. of Environmental Protection
- [Edward Ball Wakulla Springs State Park](#) , Florida
- Contact your state's geological survey about sinkholes at [stategeologists.org](http://stategeologists.org)

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# Lightning investigated as cause of oil tank explosions in Louisiana

[Lightning](#) is being investigated as a potential cause of a series of two oil tank explosions, that forced the evacuation of more than two dozen homes in [Louisiana](#) Thursday night.

Livingston Parish Office of Homeland Security and Emergency Preparedness director Mark Harrell said the cause of the explosions at a storage facility near the town of Denham Springs, just outside of Baton Rouge, remained under investigation Friday (May 3) by the state fire marshal's office. But he said residents reported seeing a lightning strike just before the first blast, [WAFB-TV](#) reported.

Scattered rain and [thunderstorms](#) were moving across parts of southeastern Louisiana and southern Mississippi in association with an upper-level low pressure area Thursday night.

The first oil tank explosion happened around 10:30 p.m. CDT Thursday and that fire later sparked the second oil tank explosion at around 4:30 a.m. CDT Friday.



[Oil tank explosion in Denham Springs, LA Thursday night](#)[Oil tank explosion in Denham Springs, LA Thursday night](#)

About 2,300 barrels of oil, which is more than 96,000 gallons of crude, were inside the two tanks that burned. The oil is what leaked out of the tanks and the vapor from it was fueling the fires.

Harrell said it was contained to a 125-square-foot area and wasn't a threat to spread to nearby homes. The oil fires were extinguished late Friday afternoon and no one was injured.

While the evacuation orders have been lifted for the area, the [Department of Environmental Quality](#) will remain on site over the next few days to monitor the air quality from the fumes. Crews say they will begin the cleanup process Saturday.

Plano, Texas-based Denbury Resources Inc. owns the facility where the tanks are located.





Everything New Orleans

## Oil tank fire near Denham Springs spreads to second tank, crews plan to inject foam

[Diana Samuels, NOLA.com | The Times-Picayune](#) By [Diana Samuels, NOLA.com | The Times-Picayune](#)  
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on May 03, 2013 at 3:45 PM, updated May 03, 2013 at 4:08 PM

An oil tank fire near Denham Springs was still burning and had spread to a second tank Friday afternoon, hours after [an explosion Thursday night](#). Residents in the area, who were evacuated late Thursday night, were still unable to return to their homes. No injuries were reported.

The second oil tank at the site near Linder and Arnold roads caught fire Friday about 4 a.m., prolonging the incident, said Mark Harrell, director of the Office of Homeland Security and Emergency Preparedness in Livingston Parish.

By about 3 p.m. Friday, most of the oil in the first tank, which caught fire Thursday about 10:30 p.m., had burned off, but more fuel remained and was burning in the second tank, Harrell said.

The explosion prompted officials to evacuate about 30 to 35 homes in the area Thursday night.

The two tanks had a combined capacity of about 2,300 barrels of oil.

Emergency officials originally planned to smother the fire with firefighting foam, but on Friday afternoon, decided to take a different tack: Harrell said crews would try to put out most of the fire by injecting foam into the second tank through a nozzle on the bottom of the tank.

The foam is "going to float up, and once it floats up it's going to cover the whole entire top of the oil in the tank and it should put the fire out," Harrell said.

Firefighters would then tackle the fire remaining in the first tank and any fire in the surrounding area.

Harrell said he'd "hate to even guess" how long the firefighting efforts might take, though he hoped to have residents back in their home by Friday night.

The explosion may have been caused by lightning, based on what neighbors said, Harrell said: "A lot of the neighbors that we evacuated and talked to, they said there was lightning and all of the sudden it blew, so that's what we're going to go on."

[The company that owns the tanks](#), Plano, Texas-based Denbury Resources, is offering to compensate evacuees for out-of-pocket expenses associated with their evacuation, according to a post on the Livingston Parish Office of Homeland Security and Emergency Preparedness' Facebook page.

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Daily News

## Judges Appear To Back EPA Basis For Strict Sludge Incinerator Air Rule

Posted: May 3, 2013

Appellate judges at oral arguments hinted that they could support EPA's claim that it was right to regulate sewage sludge incinerators (SSIs) with a strict Clean Air Act maximum achievable control technology (MACT) standard, which could doom the wastewater treatment facility sector's suit claiming that the air rule is unnecessarily stringent.

However, following the May 3 arguments it is unclear how the three-judge U.S. Court of Appeals for the District of Columbia Circuit panel is leaning on various other legal challenges to the SSI MACT -- including Sierra Club's claim that the MACT stringent is too weak, and a claim from the National Association of Clean Water Agencies (NACWA), representing wastewater utilities, that even if the agency was right to set a MACT that the standard is too stringent.

The suit, *NACWA, et al. v. EPA, et al.*, is the first legal test for EPA's package of combustion air rules that also includes a boiler MACT, an air rule for commercial, industrial and solid waste incinerators (CISWI), and a waste definition rule. The SSI rule is the only one of the package that EPA refused to reconsider at industry's request.

EPA has since finalized changes to the boiler MACT, CISWI rule and waste definition rule, and those regulations face pending legal challenges, though initial filings have only just begun in those suits.

In the sludge air rule case, NACWA claims that EPA made a fundamental error by regulating SSIs under Clean Air Act section 129 which sets out the requirements for MACT standards, because sewage sludge does not come "from" commercial or industrial facilities or the public -- a key factor for regulating under a MACT.

NACWA says EPA should have regulated the units under air law section 112 which requires less onerous generally available control technology (GACT) technology. The group argues that the sludge is a product "from" publicly owned treatment works (POTWs) and not the public, and therefore weaker GACT should apply.

Section 129, which applies to solid waste combustion air rules, says that the term "solid waste incineration unit" means "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels)."

NACWA says that sewage sludge is the product of POTWs, not the public. EPA claims the term is ambiguous and its interpretation that the waste comes from the public is permissible and due deference by the court.

At oral arguments, attorney Jeffrey Knight on behalf of NACWA said that the agency has redefined the regulatory scope of POTWs by including SSIs under section 129, rather than section 112. When section 129 is read in context, alongside section 112, then the more lax section 112 control should apply, he argued. Section 112 gives EPA authority to impose less-stringent GACT emissions control mandates at some hazardous air pollutant sources.

"Congress did not leave that discretion to the agency" to redefine the scope of POTWs, Knight said. He noted that EPA in its combustion rule package policy defining non-hazardous secondary materials (NHSM) used a definition of POTWs that contends that sewage sludge does not come "from" the public, contradicting its claims on the SSI rule. "There is no acknowledgment of that conflict, or attempt to reconcile that conflict," he said.

However, judges appeared skeptical of NACWA's position. "I used to live in Chicago. I can say I am from Chicago, even though I had several stops along the way," said Chief Judge Merrick Garland, a Clinton appointee.

Knight told Garland later in the hearing that “you may be from Chicago, but you are the same person in body. That is not at all the case for sewage sludge.”

Judge David Sentelle, a Reagan appointee, was also doubtful of the POTW operators' claims. “Certainly it is not fanciful language that sewage sludge originates from the general public,” Sentelle said.

Department of Justice attorney Michele Walter, representing EPA, said that the discrepancy between EPA's definition of sewage sludge as “from” the public in the SSI rule, but not the NHSM rule, stems from the fact the NHSM rule uses a definition of POTWs which appears in the Resource Conservation & Recovery Act (RCRA).

The RCRA definition includes a “domestic sewage exclusion” that was intended to limit the scope of the law to avoid an expansive interpretation that would capture waste that is beyond Congress' intended scope of RCRA, Walter said, and the exclusion “has no bearing” on the Clean Air Act.

When asked by Sentelle whether, “at bottom, there is no reason why the two definitions would have to be essentially the same,” Walter said that is the correct interpretation.

### Emission Standards

Although the judges appeared to back EPA's basis for the stringent SSI air rule, their position was less clear on other issues raised in the case. NACWA has argued that even if the court finds EPA has authority to impose a MACT, the emissions standards that the agency set were stricter than the Clean Air Act requires.

Sierra Club has challenged the standards as being too lax and also faulted EPA for not properly exploring “beyond the floor” options for regulation that could impose even stricter controls. MACT “floors” are maximum emissions limits that are supposed to reflect the average emissions of the 12 percent best-performing sources in a given source category, but both sides in the case challenge EPA's methodology for setting them.

The judges focused on Sierra Club's contention that EPA's use of a statistical method called the upper prediction limit (UPL) to set MACT floors was wrong because a UPL is not a true average and results in less stringent MACT limits.

Sierra Club also says EPA wrongly excluded factors not strictly related to smokestack control technology, such as overall plant design and operator training, when setting MACT, a requirement established by the D.C. Circuit in other litigation over the agency's brick manufacturing MACT.

Further, the agency should have considered the composition of sewage sludge at different locations, which affects emissions, Sierra Club argues, and should require continuous emissions monitoring to ensure compliance.

Sierra Club attorney James Pew said that the UPL “is not the average by any stretch of the imagination.”

Walter countered on behalf of NACWA that the UPL is a valid statistical approach and is designed to take into account the regional variability in the content of sludge to which Sierra Club refers.

EPA attorney Martha Mann said the agency did respect the D.C. Circuit's directive to consider non-technological factors when setting the MACT, and that the agency did its best in a limited amount of time to account for geographic variability of sludge content. “EPA was under a court order” to complete the MACT, and “we didn't have time” to sample sludge for regional variations more broadly. However, “SSI sludge is much more homogeneous” than that which is burned by other types of incinerators, she said.

Pressed by the judges on whether the court should vacate the rule, or merely remand the rule to leave emissions limits in place while EPA reworks the rule as Sierra Club seeks, Pew said that there is no need to vacate, because “these standards can be remanded and fixed before industry has to comply” with the rule as written. Industry has until March 2016 at the latest to comply with the rule. -- *Stuart Parker* ( [sparker@iwpnews.com](mailto:sparker@iwpnews.com) )

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Daily News

## Army Elevates Perchlorate Standards Dispute At Texas Site To EPA Chief

Posted: May 6, 2013

The Army is elevating a dispute with EPA over perchlorate cleanup levels to the agency's acting administrator, after having failed to reach agreement at the regional level on the appropriate cleanup level for a Texas site in the absence of federal drinking water standards.

A high-level Army official and EPA Acting Administrator Bob Perciasepe will also seek to settle several other issues in dispute at the Longhorn Army Ammunition Plant in Texas, according to an Army spokesman.

The upcoming meeting between Army Assistant Secretary for Installations, Energy & Environment Katherine Hammack and Perciasepe will also include the executive director of the Texas Commission on Environmental Quality (TCEQ), according to the spokesman. The spokesman does not believe the meeting has yet been scheduled.

The elevation comes after EPA Region VI, following several months of consideration, sent Hammack's deputy [a letter April 5](#) setting out the region's decision on several disputed issues related to the cleanup at Longhorn.

The Army recently responded in writing to both EPA and TCEQ, but declined to release the letter to *Inside EPA*.

The Army and EPA [have been in dispute for many months](#) over what cleanup level for perchlorate should be applied at the former ammunition plant near Caddo Lake in Karnack, TX, with the dispute at the Region VI administrator level over the past several months. The cleanup could set a precedent over when federal or state regulatory standards should be applied at cleanup sites.

The two agencies have also clashed over EPA's plan to impose penalties during the dispute due to the Army's failure to incorporate changes EPA has sought in three draft records of decision (RODs), according to one informed source.

In his April 5 letter, EPA Region VI Administrator Ron Curry says there are four issues still to resolve: the cleanup and monitoring standards to use for contaminated groundwater, land use control (LUC) objectives and their duration, and the assessment of stipulated penalties.

At issue are three draft final RODs governing four operable units at Longhorn, including an old landfill, a burning ground and two munitions testing areas, according to the letter. In October 2011, EPA invoked formal dispute resolution over eight issues at the site.

"The first issue involves the role of state standards and federal guidance where there currently is no federal primary Maximum Contaminant Level for specific contaminants (i.e., perchlorate, manganese, and nickel) that are found in contaminated groundwater at this site," Curry writes. "More specifically, the issue concerns how to consider the Texas standards (for groundwater residential or groundwater industrial/non-residential use) in the remedy selection process, consistent with [the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)] and the National Contingency Plan [NCP]."

While the issue is still disputed, EPA has shifted its position from its original insistence on using an EPA screening level to supporting a new state standard, an Army source says. The Army is still pressing for use of an older state screening level, the source says.

### Perchlorate Cleanup

At issue is what applicable or relevant and appropriate requirements (ARARs), including state, federal and other "applicable" standards and cleanup levels, should apply at the site with regard to perchlorate. Under Superfund law, ARARs are one of two threshold requirements that all cleanups must meet, though EPA's policy generally leaves regulators with significant discretion to identify ARARs on a site-specific basis.

Initially, EPA pushed for applying its 15 parts per billion (ppb) health advisory level for perchlorate, which the agency set in 2009 after it had originally established a non-binding preliminary remediation goal of 24.5 ppb in 2006.

The Army has sought to use a Texas human health screening level of 22 micrograms per liter (ug/L), which the state set when it embraced the 24.5 ppb EPA health advisory level as its own. The Army believes the Texas level trumps EPA's newer health advisory number as an ARAR.

An informed source has previously said that typically, when ARARs are considered, there is a hierarchy as to which types of regulations are considered for application at a site. Federally promulgated standards such as MCLs are considered highest priority, followed by state promulgated standards, federal health advisory levels and state health advisories, the source says.

It is unclear whether the hierarchy is written into any policies, but EPA guidance says that the determination of whether a requirement is "relevant and appropriate" for a site is whether "another requirement exists that more fully matches the circumstances at the site."

But now EPA for the first time in the Curry letter is raising a different, new standard set by Texas as the cleanup level to use, the Army source says.

Curry says where there is no MCL or where states have stricter standards than an MCL, "it may be appropriate to consider state standards in determining the cleanup level for a CERCLA response action." EPA is backing the use of Texas's protective concentration limits (PCLs), developed as groundwater cleanup levels, for the Longhorn site, where groundwater has been designated as a potential drinking water source. The state updated its PCLs June 29, setting the perchlorate level for residential cleanups at 17 ug/L.

"Region 6 believes the PCLs may be sufficiently stringent (when evaluated in light of the EPA Health Advisory Information and the TCEQ risk model data and information) to ensure protection of human health, and may be sufficient to ensure restoration of contaminated groundwater to its potential beneficial uses, consistent with the NCP," Curry says. This decision could change when EPA finishes its rulemaking for creating a federal MCL for perchlorate, he says.

### **Stipulated Penalties**

Stipulated penalties are also in dispute, with EPA first assessing penalties against the Army in October 2011 due to the Army's three draft final RODs allegedly failing to comply with CERCLA, the NCP and EPA guidance. The Army has argued EPA lacks a basis for the assessed penalties because it submitted documents on time, and has argued that EPA's use of penalties for "disagreement on text" is not consistent with federal policy, which favors "good faith cooperative dispute resolution," according to the letter.

But Curry says under the Federal Facilities Agreement, which governs the cleanup, stipulated penalties are not limited to late submissions and notes that CERCLA section 120(e)(4)(A) "gives the EPA joint remedy selection authority, with sole remedy selection authority in case of a disagreement. Consequently, the EPA views this dispute as far more than a 'disagreement on text' because the language memorialized in the RODs ultimately affects whether the remedy will be protective."

EPA says it is ratcheting down the amount of penalty assessed from \$2.02 million to \$1.19 million, citing the agency's decision to halt the accrual of penalties as of Sept. 28 -- the date of the last written communication among the key negotiators -- and given EPA's issuance of the Region VI decision was solely in EPA's hands. EPA also assessed the penalties on a per ROD basis, rather than an operable unit basis.

On LUCs, Curry says the Army "refused to properly select, specify and document LUC objectives and the duration of LUCs" in draft final RODs for the four operable units in question. In order to ensure long-term protection from a remedy, LUCs' objectives and duration need to be adequately addressed, the letter says. He notes that it is imperative that groundwater monitoring and remedial systems at the site be designed to include controls and restrictions.

"It is important to note that the [Longhorn] operable units in question require special attention and precautions in light of the waste under the landfill cap . . . , soil (surface and/or subsurface restricted to nonresidential use) and groundwater contamination

that will remain at the operable units for years (i.e., 117 and 280 years of groundwater contamination); public/human safety risks due to potential explosive hazards," the proximity to surface waters and the site's location in a 100-year flood plain and near drinking water wells, livestock and domestic wells, the letter says.

Curry specifies LUCs objectives and duration language for inclusion in the draft final RODs.

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Source: Daily Environment Report: News Archive > 2013 > May > 05/06/2013 > News > Air Pollution: Water Agencies Tell Court EPA Promulgated Incinerator Rule Under Wrong Section of Law

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### *Air Pollution*

## **Water Agencies Tell Court EPA Promulgated Incinerator Rule Under Wrong Section of Law**



*By Jessica Coomes*

Municipal water agencies told a federal appeals court May 3 that the Environmental Protection Agency issued air pollution limits for sewage sludge incinerators under the wrong section of the Clean Air Act (*National Ass'n of Clean Water Agencies v. EPA*, D.C. Cir., No. 11-1131, *oral arguments* 5/3/13).

EPA set the standards under Section 129 of the act, but the incinerators should be regulated under Section 112, the National Association of Clean Water Agencies told the U.S. Court of Appeals for the District of Columbia Circuit during oral arguments. Section 112 addresses air toxics, and Section 129 regulates solid waste combustion. Section 112 is considered more flexible than Section 129.

Meanwhile, the Sierra Club, which also is challenging the rule, argued that EPA erred in its calculations on the best-performing units on which the required control technology is based.

The final rule, which EPA published in March 2011, sets new source performance standards and emissions guidelines for sewage sludge incinerators for nine pollutants (76 Fed. Reg. 15,372).

### **Sludge Not 'From' General Public**

Under Section 112(e)(5) of the Clean Air Act, sewage sludge incinerators would be regulated as publicly owned treatment works. Under Section 129(g)(1), they would be regulated as solid waste incineration units, which are defined as "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels)."

The water agencies argued the "treatment works" referenced in Section 112 include sewage sludge incinerators. The Section 129 definition does not apply because sewage sludge comes from publicly owned treatment works, not "from" the general public, Jeffrey Knight, an attorney with Pillsbury Winthrop Shaw Pittman LLP representing the water agencies, told the court.

However, Judge Merrick Garland expressed skepticism over the industry position. During oral arguments, Garland said he can claim to be "from" Chicago, where he grew up, even though he has moved away and lived in other cities.

But Knight argued that after domestic sewage is collected from the public, it is treated by publicly owned treatment works, becoming a wholly new material, sewage sludge.

Michele Walter, a Justice Department attorney representing EPA, said that just because sewage sludge has been processed, the original source does not change.

The water agencies consider Section 112 to be a more flexible section of the Clean Air Act because Section 129 does not distinguish between major and area sources, and Section 112 controls are less stringent for area sources. Unlike Section 112, Section 129 also requires EPA to set emissions limits for nonhazardous air pollutants related to combustion. In addition, Section 129 requires a siting review before new units may be built, which gives EPA the authority to prevent construction, the trade group has said.

Walter argued that Section 129 broadly requires the regulation of solid waste incinerators with only four narrow exemptions, including energy recovery, and sewage sludge incinerators do not fall into any of the exemptions.

### **Best Performers Not Reflected**

Also during oral arguments, James Pew, an Earthjustice attorney representing the Sierra Club, argued that EPA set the emissions floors, or minimum stringency levels, at levels that do not reflect the best-performing incinerators.

EPA must establish maximum achievable control technology floors for existing sources based on the average emissions of the best-performing 12 percent of units in the source category.

EPA collected emissions data from just 22 of the 154 multiple hearth incinerators and six of the 60 fluidized bed incinerators operating in the United States, the Sierra Club said.

EPA has said it sought data from the municipalities with the most efficient emission control technologies. Martha Mann, a Justice Department attorney representing EPA, said the agency did not have time to conduct a broader data collection effort because it promulgated the rule under a court-ordered deadline.

The Sierra Club has argued that because EPA collected emissions data from a small proportion of the incinerators, the agency cannot be sure those units actually are the best-performing 12 percent of the source category.

In addition, the Sierra Club has said EPA cannot choose the best-performing units based on technology, instead of emissions levels, unless technology is the only factor affecting emissions. For sewage sludge incinerators, other factors can affect emissions, including the metal content in specific sludge, the age of a unit, and operator training, Pew said during oral arguments.

However, Mann told the judges that those non-technology factors do not have a significant effect on emissions.

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## THE BEST WAY TO TRACK CONGRESS

### 2. EPA:

#### McCarthy vote set, but Republicans still unhappy

Jason Plautz, E&E reporter

Published: Monday, May 6, 2013

Days before a vote on President Obama's nominee to head U.S. EPA, Republicans on the Environment and Public Works Committee say they still have questions about the agency's approach to transparency.

The committee is set to vote Thursday morning on the nomination of air chief Gina McCarthy to head the agency. But ranking member David Vitter (R-La.) said Friday that he's still waiting on answers to a set of five requests he and fellow Republicans made of the agency regarding transparency, which could threaten McCarthy's nomination.

"So far, EPA's response to the committee Republicans' transparency requests has been inadequate. But I remain hopeful that that will improve over the next week," Vitter said. "We'll see how much EPA is willing to supplement in the next week, and that will determine how Republican members handle the scheduled markup."

Weeks before McCarthy's April confirmation hearing in front of the EPW panel, Republicans sent a list of five requests to EPA, including that the agency issue new guidance for standards and procedures in responding to Freedom of Information Act requests. They also requested that McCarthy's private email accounts be "exhaustively reviewed," that underlying data for Clean Air Act rules be made public, that petitions for rulemaking be tracked and listed publicly, and that EPA promise in writing to conduct cost-benefit analyses for future regulations.

Two weeks ago, they also asked EPW Chairwoman Barbara Boxer (D-Calif.) to delay the confirmation vote until the agency had answered their questions, saying Boxer delayed a hearing on Nuclear Regulatory Commission chairwoman nominee Allison MacFarlane to wait for more information ([E&E Daily](#), April 26).

McCarthy at her April hearing vowed that she does "not discuss business through personal email" and said she "did not find any circumstance" where she had transferred work documents through her personal account. She also promised to address the transparency issues if appointed to EPA.

Boxer last week said McCarthy is a "strong, bipartisan candidate and is the right person for the job at this critical time."

If confirmed by the EPW committee, McCarthy would still face an uphill battle on the Senate floor. Sen. Roy Blunt (R-Mo.) has a hold on her nomination over EPA's missed deadline for the release of a draft environmental statement for a floodway project in his home state. EPA has said it will move on the EIS as soon as it gets information from other federal partners.

**Schedule:** The markup is Thursday, May 9, at 9:15 a.m. in 406 Dirksen.

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## THE BEST WAY TO TRACK CONGRESS

### 12. EPA:

#### Acting administrator to discuss spending plan with House appropriators

Jean Chemnick, E&E reporter

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U.S. EPA acting Administrator Bob Perciasepe will face House appropriators Wednesday to discuss his agency's \$8.2 billion fiscal 2014 budget request.

Perciasepe's visit to Capitol Hill comes one day before the Senate Environment and Public Works Committee's scheduled vote on the nomination of air chief Gina McCarthy to replace former EPA Administrator Lisa Jackson (*see related story*).

The Obama administration's EPA budget proposal represents a reduction of more than 3 percent from current spending levels, and -- if recent years are any predictor -- the House Appropriations Committee is likely to shrink that further in the spending bill it moves later this summer.

Cuts are particularly likely for controversial programs such as EPA's climate-change-related activities. The agency is asking for \$254 million for science and technology programs addressing climate change and air quality, and \$477 million for environmental programs and management in the same categories.

Lawmakers from both parties are likely to object to the deep cuts the request proposes for two popular water revolving funds that help state and local governments finance infrastructure improvements. The state revolving funds for drinking water and sewage treatment would see \$472 million in cuts under the president's budget. The programs, which make up about one-third of EPA's total budget, have been targeted for cutbacks in previous budget years, and appropriators have usually restored a portion of that funding.

In 2011, for example, Rep. Mike Simpson (R-Idaho), the chairman of the House Interior, Environment and Related Agencies Appropriations Subcommittee, which is holding Wednesday's hearing, took Jackson to task after EPA requested a 22 percent cut for the two state grant programs in fiscal 2012. The agency proposed modest single-digit percentage cuts to federal operations and research, he noted.

"This is not the blueprint for reduced federal spending and debt reduction that the American people and congressional Republicans are demanding," Simpson said ([E&E Daily](#), July 5, 2011).

The fiscal 2014 budget also calls for cuts of \$33 million to the Superfund hazardous waste program and \$24 million to the Diesel Emissions Reduction Act grant program, which could also be unpopular with lawmakers ([E&ENews PM](#), April 10).

Advocates of the diesel program have said Congress might restore some of its funding, which got a \$30 million allocation in fiscal 2012.

In recent years, the Appropriations Committee has added numerous riders and amendments to its spending bill for EPA with an eye toward limiting the agency's ability to regulate greenhouse gases and other emissions. But almost all House policy riders have been stripped out by the Senate.

And if Congress continues its recent tradition of moving EPA spending as part of a larger omnibus appropriations bill or through a stopgap spending measure -- usually without holding a final vote on the bill in the House -- that makes enactment of policy riders even less likely.

**Schedule:** The hearing is Wednesday, May 8, at 1 p.m. in 2359 Rayburn.